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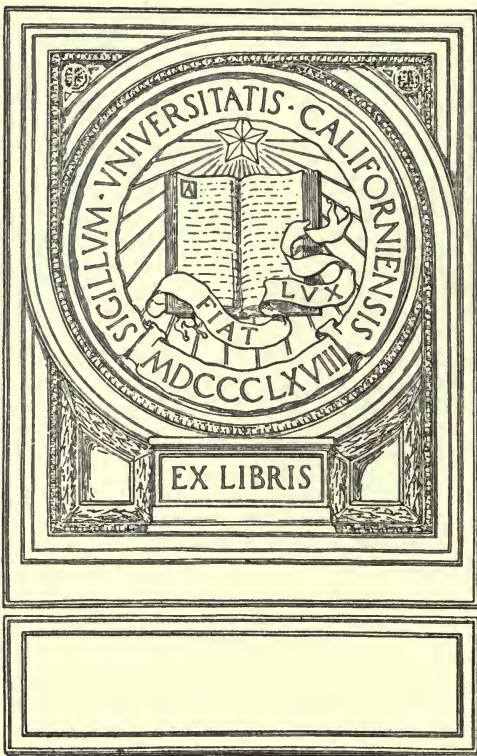
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# THE APPORTIONMENT OF TRAFFIC

AMONG COMPETING RAILROADS

AS A MEANS OF MAINTAINING RATES,

By JOSEPH NIMMO, JR.,

DECEMBER 15, 1892,

Together with a statement upon the same subject,  
from his report on The Internal Commerce of  
the United States, as Chief of the Bureau of  
Statistics, submitted to the Secretary of the  
Treasury, January, 1885.

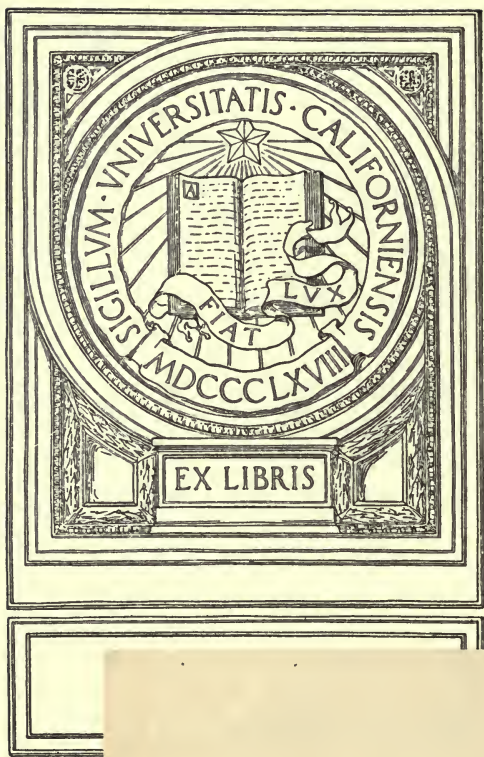
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JOSEPH NIMMO, Jr.,

1831 F Street,

Washington, D. C.



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## INTRODUCTORY NOTICE.

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During the last two years I have received many requests from students of the railroad problem, journalists, legislators, and persons interested in transportation affairs for copies of my views upon the "pooling" or apportionment of competitive traffic, as presented in my report on the Internal Commerce of the United States, published in the month of January, 1885.

Recently the Interstate Commerce Commission has asked me for my present views upon the same subject. My report for the year 1885 has long since been out of print. I have concluded, therefore, to republish the chapter of that report in regard to Railroad Associations and the Apportionment of Competitive Traffic, together with an expression of my present views upon that subject.

JOSEPH NIMMO, JR.

No. 1831 F Street,

WASHINGTON, D. C., *Dec. 15th*, 1892.

## THE APPORTIONMENT OF TRAFFIC AMONG COMPETING RAILROADS.

The chapter on Railroad Federations and the Apportionment of Competitive Traffic, herewith republished from my official report on the Internal Commerce of the United States for the year 1885, constitutes a part of the results of an investigation of the commercial interests of the country and of writing reports upon that subject during the period from 1875 to 1885. In the course of that investigation I carefully considered every objection to "pooling," so called, of which I could conceive or which was brought to my attention by other students of the subject. I also challenged every prominent advocate of the expedient to a proof of all that he claimed for it. Finally, as the result of such inquiries, relating not only to the commercial and economic aspects of the question, but also to its merits from the point of view of public policy, I was forced to the conclusion that agreements as to the division of competitive traffic for the specific purpose of maintaining agreements as to rates between competing lines were in the nature of self-restraint; also that they had served the purpose of correcting certain flagrant evils in the conduct of transportation by rail. These conclusions were reached two years before the passage of the Act to Regulate Commerce. As an officer of the Government, I did not at that time feel entirely justified in recommending the legalization of the apportionment of competitive traffic, preferring to await the developments of experience. A somewhat careful observation of the course of events during the last eight years has, however, not only verified the conclusions which I reached in the year 1885, but has forced upon

me the conviction that agreements as to the division of traffic among competing lines lie at the very foundation of order in the conduct of the internal commerce of the country, and that such agreements are, besides, essential to the successful administration of the Act to Regulate Commerce.

There appear to be but two fundamental questions to be considered by any person who sincerely desires to reach a right conclusion upon this important matter, viewing it solely in the light of the public interests. Those questions are :

*First.* Are combinations for the purpose of restraining the full force of competitive struggles in commercial and industrial pursuits in any case justifiable upon considerations of public policy ?

*Second.* Should agreements as to the pooling or division of traffic for the maintenance of rates among competing railroads be regarded as in the nature of just and beneficent combinations ?

It is too late in the day to spend much time in debating the first of these questions. The evolution of the commercial and industrial enterprises of the age constitutes its full and complete answer. Our country is to-day, on all sides, confronted by combinations for good and combinations for evil ; by combinations which protect competition and promote progress, and by combinations which stifle competition and arrest progress. The very intensity of human activity in commerce, in industrial pursuits, and in transportation have compelled certain restraints through combination, the necessity for which and the beneficent character of which have been clearly proved by the lessons of experience. Combination is the most pronounced symptom of our civilization. By it the largest results in science, in art, in trade, in education, and in religion are

being evoked. Combination shields capital and draws it out into active employment, and it also protects labor against itself and against capital.

Besides all this, the jurisprudence of Great Britain and of the United States clearly sustain restraints upon destructive competition. This is no new doctrine of the law. In the case of *Mitchell v. Reynolds*, decided about the year 1711, and reported in "Smith's Leading Cases," the policy of the law of England at that time is stated as follows :

"The present doctrine is that while contracts in total restraint of trade are void, yet if the restraints imposed be partial, reasonable, and founded on good consideration, they are valid and will be enforced."

I believe there is nothing in English or in American jurisprudence which conflicts with that doctrine.

I turn, therefore, to the second of the test questions above propounded, viz: *Should agreements as to the pooling or division of traffic for the maintenance of rates among competing railroads be regarded as in the nature of just and beneficent combinations?* My answer to this question is in part embraced in the extract from my report on Internal Commerce for the year 1885, which these statements preface.

The reasons there adduced in favor of the legitimacy of agreements in regard to the division of traffic for the purpose of maintaining rates are based upon the following considerations: first, the physical infirmity of the railroad which prevents it from ever becoming a free highway of commerce; and, second, the fact that the evolution of the American Railroad System, with all its dependent relationships, compelled the adoption of administrative methods which lacked the conservative influence of that caution which attaches to ownership and to personal responsibility for results.

But there is a third and much more cogent reason why agreements as to the share of competitive traffic should be legalized. It is a reason which emerges from the overshadowing fact that the evolution of the American Railroad System has begotten a competition of commercial forces vastly more potential than any power which the railroads of the country can exercise, either singly or through any possible form of combination. The railroad managers of the country foresaw the loss of independence and of power which was involved in the formation of the American Railroad System, and they opposed every step toward that loss of power until opposition was seen to be useless. The tendency toward a substantial union of American Railroads was irresistible. The economies of transportation and the needs of the commercial and industrial development of the country tended strongly in that direction. Connected tracks, a common gauge, union depots, through rates, the classification of commodities, rate agreements, prorating, through tickets, related time schedules, the unimpeded passage of freight, passenger, express, and postal cars, and of locomotives over the tracks of different companies, and to a considerable extent the employment of operatives on the lines of different companies—all these co-operative arrangements came about in spite of every effort to preserve the autonomy of different railroads as independent factors in the great work of internal commerce. This wonderful economic and commercial evolution was fully recognized and legalized in the act of June 15, 1866. That act, the most important concerning the internal commerce of the United States which has ever been enacted by Congress, reads as follows :

AN ACT to Facilitate Commercial, Postal, and Military Communication  
among the States.

Whereas, the Constitution of the United States confers upon Congress, in express terms, the power to regulate commerce among the several States, to establish post roads, and to raise and support armies ; therefore,

*Be it enacted by the Senate and House of Representatives of the United States in Congress assembled,* That every railroad company in the United States whose road is operated by steam, its successors and assigns, be, and is hereby, authorized to carry upon and over its road, boats, bridges, and ferries all passengers, troops, Government supplies, mails, freight, and property on their way from any State to another State, and to receive compensation therefor, and to connect with roads of other States, so as to form continuous lines for the transportation of the same to the place of destination. \* \* \*

SECTION 2. *And be it further enacted,* That Congress may at any time alter, amend, or repeal this act.

This act of Congress constitutes essentially THE CHARTER  
OF THE AMERICAN RAILROAD SYSTEM.

Furthermore, all that is involved in this vast system of transportation in the nature of co-operation is sustained and, with respect to freight traffic, made obligatory upon the companies by the provisions of section 7 of the Act to Regulate Commerce. This section reads as follows :

That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any combination, contract, or agreement, expressed or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freight from being continuous from the place of shipment to the place of destination ; and no break of bulk, stoppage, or interruption made by such carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage, or to evade any of the provisions of this act.

The physical, commercial, and financial union of railroad interests has proceeded to that point at which the

entire American Railroad System must be regarded as "many members but one body."

This wonderful railroad system constitutes the most gigantic combination of material interests that the world ever saw—a combination essentially in the public interest, formed not by the volition of those who control its constituent elements, but by an overshadowing compulsion of circumstance which forced those elements into union.

The most important result secured by the formation of the American Railroad System was that it presented an opportunity for the free and untrammelled competition of commercial and industrial forces.

Thus it has come about that the commercial and industrial interests of the country, which many times exceed the interests of transportation, in point of capital invested, have secured a complete mastery over the latter. The unforeseen and most portentous outcome of this wonderful commercial development is the fact that men engaged in commercial pursuits and in productive industries, seeing the advantages which this condition of affairs opened up to them, have united in trusts and in combinations of various sorts, some of which are in restraint of the freedom of trade and of industry, and unmistakably and flagrantly in the nature of monopolies.

Thus trusts and monopolistic combinations not only interfere with the inalienable right of all men to live and labor in an open field and in a pure atmosphere, in the prosecution of commercial enterprise, but they also demoralize and oppress the transportation interests of the country. These trusts sometimes combine so as to throw their shipments upon one road or another in such manner as to baffle railroad managers and to produce outrageously unjust discriminations. The value of the com-

modities carried by rail each year is at least three times the value of the entire railroad property of the country, and thirty times the annual gross earnings of all the railroads of the country. This clearly exhibits the enormous preponderance of the forces of trade over those of transportation, and it also suggests the ease with which trusts and combinations of trusts are able to thwart the railroads in their efforts to protect themselves, or to observe the requirements of the Act to Regulate Commerce.

The evil of allowing large shippers to dominate the internal commerce of the country, and of permitting the railroads to become parties to such unjust discriminations, was first brought to my attention by Mr. Albert Fink in the year 1876, and is presented on page 40 of the Appendix to the First Annual Report on the Internal Commerce of the United States, submitted June 30, 1877.

Just here it appears proper to invite attention to certain radical differences between trusts and monopolies in trade and industry, and agreements between railroad companies as to the apportionment of competitive traffic for the purpose of maintaining rates :

1. The commercial and industrial trust is formed between a select few, who keep all the rest of the competitors out of the combination ; they then proceed to break down all the outsiders ; whereas a railroad traffic apportionment must of necessity embrace all of the competitors in its provisions, and, besides, it preserves the weaker lines from destruction.

2. Again, each member of a commercial or industrial trust steadfastly seeks to retain his place inside of the organization, while each member of a railroad " pool " or apportionment of traffic is desirous of escaping from its restraints ; the tendency, in the absence of legal sanction of the agreements entered into, causing such associations

to be unstable, and in many cases leading to their dissolution.

These are distinctive traits of radically different sorts of combinations—the one in the nature of monopoly and in restraint of wholesome competition, and the other in the nature of restraint of monopoly and protective of wholesome competition.

At the present time agreements as to the apportionment of competitive traffic constitute the only known antidote to the baneful influences which are exerted over transportation affairs by commercial trusts, and large shippers.

In passing, I would remark that in my opinion there is no subject which at this time so loudly calls for earnest and thorough investigation at the hands of State legislatures and of Congress as do the evils arising from the assaults of illegitimate trusts and other pernicious combinations upon commerce, upon industrial enterprise, and upon the conduct of the transportation business of the country. The sole end and aim of such assaults, in so far as relates to the railroads, is to produce discriminations in rates, which shall be for the benefit of the parties to such iniquitous combinations. The Act of July 2, 1890, "to Protect trade and commerce against unlawful Restraints and Monopolies" is especially directed against such trusts as are here referred to, but there is need of amendments which shall enable the courts and the general public more readily to distinguish between combinations and practices which are legitimate and beneficial toward the public interest, and such as are illegitimate and baneful in their purposes and tendencies.

Thus I have attempted to show that in the evolution of the American Railroad System unforeseen and apparently

overwhelming difficulties have arisen, which difficulties are in some measure traceable to infirmities of administration, but mainly to the assaults of commercial and industrial trusts upon the transportation interests of the country.

The result of this untoward course of events has been that the rate-making power has gradually slipped from the hands of railway managers, to whom it is nominally delegated, and that it has been remitted to the more potential shippers. It needs no word of explanation to prove that this is at once demoralizing to trade, to industrial enterprise and to transportation. Manifestly, also, it is the very inspiration of commercial disorder. At last, for self-protection and to maintain the orderly conduct of commerce, the railroad companies were forced to enter into agreements as to the maintenance of rates. That I believe to be unimpeachable history. The experience of railroad managers has also proved to them that such agreements, essential to self-preservation and to the preservation of commercial order, can be maintained *only upon the basis of precedent agreements as to the share of the competitive traffic or of the receipts therefrom which shall be awarded to each competitor*. That I believe, also, expresses the logic of events. I have been forced by my studies of the internal commerce of the United States to accept these conclusions as fundamental law of railroad transportation, and to maintain that their practical recognition is vital to the existence and beneficent administration of the American Railroad System.

The first of the conclusions just enunciated, viz., the necessity of agreements as to what competitive rates shall be, and as to the maintenance of such rates, now commands general public approval. This fact is clearly expressed in the sixth section of the Act to Regulate

Commerce, which section requires ten days' notice of advances in rates and three days' notice of reductions in rates.

The second of the conclusions above noted, viz., that agreements as to the share of competitive traffic which shall be awarded to each competitor are essential to the observance of the law touching the maintenance of rates, is, to my mind, simply a corollary to the first proposition as to the necessity of agreements in regard to the maintenance of rates, and I entertain little doubt that this view of the case will ere long be generally accepted. I do not express this opinion as the dictum of any philosophy other than the philosophy of practical experience in the conduct of the railroad transportation interests of the country, under enormous difficulties, which in an imperfect manner I have attempted to sketch.

In this connection it is with great pleasure that I advert to the exceedingly able and exhaustive report submitted to the Senate, January 16, 1886, by the Honorable Shelby M. Cullom, Senator of the United States, in his capacity as chairman of the Senate Committee on Interstate Commerce. The language there employed (page 201) by Senator Cullom is as follows :

"It" (*i. e.*, the various forms of restraint upon competition, as described) "would not destroy the benefits of legitimate competition, but it would place a wholesome restraint upon reckless competition, and in that way lessen unjust discrimination, which is developed in its most objectionable forms under the nourishing influence of unrestricted competition. For these reasons the committee does not deem it prudent to recommend the prohibition of pooling."

In his speech in the Senate January 6, 1887, in opposition to the fifth section of the Act to Regulate Commerce, Senator Platt, of Connecticut, adopted my nine general

conclusions upon pooling associations as his conclusion in regard to the whole matter. If I were to rewrite those theses to-day I would make no change in them other than to make them more emphatic, and to add that the lessons of experience have proved to me beyond all doubt that agreements as to the apportionment of competitive traffic are so manifestly in the nature of self-restraint, and so essential to the orderly conduct of the American Railway System, as to demand their legalization under no other constraints than those imposed by the common law relative to unreasonable rates and unjust discriminations, which provisions of the common law are adopted into, and made a fundamental part of, the "Act to Regulate Commerce."

And now I desire to invite attention to the exact conclusions at which I arrived in the year 1885 :

1. Agreements as to the apportionment of traffic between competing railroads, for the purpose of maintaining rates, are beneficial toward the public interests, and ought to be legalized.

2. The question as to whether any particular agreement in regard to the apportionment of railroad traffic is justifiable, upon the ground of maintaining rates, or of securing any other laudable object, is one which might well be left to the determination of a national railroad commission.

These conclusions were reached two years before the Act to Regulate Commerce became a law, and when, in the language of a distinguished jurist, I viewed this whole subject "with a mind illuminated by the sense of official responsibility." Now, viewing it I trust with as sincere a regard for the public interests, I have no hesitancy in saying that my confidence in the intelligent judgment and patriotic impulse of the gentlemen who constitute the Interstate Commerce Commission leads me to the belief

that it would be well to confide to that body the responsibility of determining whether any particular agreement as to the division of competitive traffic is or is not characterized by the conditions above mentioned as constituting the essential requisites of legality.

Attention is now invited to the views expressed by me in the following official statement published in the month of January, 1885.

## Railway Federations and the Apportionment of Competitive Traffic.

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From the Annual Report on the Internal Commerce of the United States,  
submitted January, 1885, by Joseph Nimmo. Jr., Chief of the  
Bureau of Statistics.

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The general conditions involved in the so-called railroad problem and certain of the more general characteristics of the railroad system of the United States were described in the report of this office on internal commerce for the year 1880. While the general views and statements of facts then presented are still adhered to, the subject has somewhat advanced and assumed new phases, as the result of changes which have taken place during the last four years in the commercial and transportation interests of the country. Such changes have been largely the result of the extension of railroads. The total railroad mileage of the United States increased from 86,499 miles at the beginning of the year 1880 to 121,992 miles at the beginning of the year 1884.

In the year 1880 there were but two railroad companies engaged in transcontinental transportation, the Union Pacific and the Central Pacific. These companies were not competitors but coadjutors. Now there are eleven railroad companies competing sharply for a share of the transcontinental traffic. Besides, new lines have been put in operation as competitors for the great traffic between the Western and Northwestern States of the interior and the Atlantic seaboard States, and the conditions governing

transportation between these two sections of the country have been in important respects changed during the last four years.

The fact that the railroad is an avenue of commerce, the pathway of which is no wider than the wheel of the vehicle which moves upon it, at the very outset forbade that it should become in the ordinary sense a free highway. As already observed, it was inevitable from the very beginning that the charges imposed for transportation services upon it must be determined by a central authority, and not by the natural workings of the great economic and commercial laws of supply and demand, and of competition. This disability, if such it may be termed, in time developed serious evils, both with respect to the interests of railroad proprietors and of the public generally.

As lines were extended and competing roads were constructed the evils inherent in the railroad system of the country were rapidly developed. At last the transportation interests of the United States assumed a degree of complexity which transcended the ability of the most intelligent to understand, and baffled the skill of the most adroit to carry into execution any well-devised scheme of administration. Railroad managers were at their wit's end. Wars of rates prevailed extensively and receipts from traffic were greatly reduced. Many railroad companies were seriously embarrassed, and others were driven into bankruptcy. No one of the competitors was satisfied with the share of the traffic which it was able to secure. At last it became apparent to the more intelligent and far-seeing railroad managers of the country that they must have recourse to some expedient in order to protect themselves against themselves.

The precise difficulty appeared to be that as railroad

lines were extended and competition among them developed, the vitally important matter of determining rates was from the force of circumstances committed to soliciting agents in all parts of the country, a class of men who were neither amenable to the caution which attaches to ownership nor moved in their acts by any general line of policy, presumably at least, directed to the object of conserving the interests of the corporations by which they were employed.

But the commercial and industrial interests of the country suffered from this state of affairs more than did the railroad companies. In the course of time published freight tariffs supplied no information whatever to the public as to the actual rates charged. Discriminations as between shippers under like conditions became the rule, and rate making, in almost all cases, a mere matter of contrivance as between individual shippers in all parts of the country, and an army of irresponsible soliciting freight agents. The general freight agents also made special secret contracts with the larger shippers as to the rates which they should pay, and even for months in advance. No shipper knew on one day what rates would prevail on the next, nor had he any idea what his competitors in trade were paying for transportation services. Thus the whole matter of freight charges became involved in incertitude. Falsehood and deception were the rule and fair dealing the exception. This state of affairs was utterly demoralizing to trade, for it was in contravention of the great fundamental law of commercial ethics that in the competitive struggles of life men shall be permitted to live and labor in an open field and in a pure atmosphere. Loud and bitter complaints arose on account of the outrageous discriminations made in rates.

A more serious result, however, arose from the fact that glaring discriminations were made as between different

localities and trade centres. For example, the rates were at one time so much less from Boston to the west than from New York to the west that commerce was turned from the latter to the former city, and shipments in considerable quantities were made from New York to Chicago, via Boston. This of course gave rise to bitter hostility against railroad management generally.

Thus, trade and industry became demoralized by uncertainties which neither the merchant nor the manufacturer could foresee, and against which they could not provide.

Occasionally the general freight agents, or other officers having the management of the freight traffic of rival roads, would meet together and agree as to the rates which should prevail; but the difficulties inherent in the system of railroad transportation, sooner or later, rendered null and void all such arrangements. Whenever an agreement as to the maintenance of rates was entered into, there seemed always to be a mental reservation on the part of the representative of each road that his observance of the agreed rate was conditioned upon the fact that his road was to secure the share of traffic to which he believed it to be entitled at each competing point. It turned out, therefore, almost invariably, that, soon after such agreements were made, the soliciting agents of one or more of the competing lines would resort to the cutting of rates, in order to make up a deficiency in his share of the traffic, in consequence of representations, either true or false, made by shippers to the effect that offers of cut rates had been made to them by the agents of competing lines. This was a constant source of demoralization. It, however, constituted a phase of the practical workings of corporate ownership and management of railroads. An able railroad manager has thus described the manner in which, by the practical abrogation of their authority, the proprietors of

railroads lost the power of determining what they should be paid for the services rendered by them to the public :

The stockholders in the first place surrender their control to a board of directors, the board of directors surrender it to the president, the president surrenders it to a general manager, who in turn surrenders it to the general freight agents of his own and a great number of other roads, who again surrender it to a large number of soliciting agents, and finally these soliciting agents surrender it to the shippers. The shippers practically make their own rates. The result is confusion and demoralization of traffic, and no end to unjust discriminations between shippers and localities.

In a word, the fundamental fact that the railroad is not, and in the nature of things cannot be, a free highway of commerce, on which rates are determined by competition among common carriers, had led up to a stage in the development of the railroad system of the country where it had gotten beyond all control. If that state of affairs had continued, all the railroads would probably have been absorbed by, and districted among, three or four great corporations. But that would have been calamitous, for such corporations would have had power enough and sufficient territorial sway to defeat the beneficent influences of the competition of commercial forces. In other words, transportation would thus have gained the mastery over trade.

The situation prior to pooling was described in a previous report of this office in language which may here be repeated :

During railroad wars the general freight agents, or other executive officers, upon whom properly devolve the matter of determining rates, invariably remit their authority to a great number of soliciting agents and local freight agents widely scattered in all parts of the country ; the only order promulgated for their guidance at such times being to make any rate which may be found necessary in order to secure traffic. Although this method of procedure is obviously in the face of good administration, of order and of economy, it is found to be an unavoidable feature of a war of rates. During these struggles success waits upon in-

trigue and false representations. The freight agents deceive the merchants, and the merchants deceive the freight agents.

For several years prior to the inauguration of pooling arrangements, the railroad transportation interests of the country ran at loose ends. The contest, being carried on independently of leadership and without method, lost the name of competition and ended in demoralization. It appears hardly necessary to observe that such a contest, involving results in the highest degree detrimental to the interests of productive industry, of commerce, and of transportation, had in it none of those conservative elements of legitimate competition which attach to ownership and to personal responsibility for results.

Experience, both in this country and in several of the countries of Europe, seems to have clearly proved that the great beneficent law of competition fails to secure a proper adjustment of rates between rival railroads or combinations of railroads struggling for a share of the traffic between common points. This appears to be a direct result of those peculiarities of the railroad as a highway of commerce which forbid that it should become, in the ordinary sense, a free highway. The necessity for some sort of restraint upon a competition which uniformly degenerates into demoralization has therefore forced itself upon the attention both of railroad managers and of those who view the matter in the light of the public interests.

The evils which produced a general feeling of discontent and of animosity against the railroads were not accidental or abnormal, but inherent in the existing system of railroad management. A radical remedy was therefore needed.

It was of course impossible that such an absurd and destructive condition of affairs should long continue.

The only expedient which has yet been devised for the prevention of the evils of wars of rates is that of the pooling or apportionment of traffic under a general scheme of the federation of the railroads. Neither the National Government nor any State government has ever proposed any expedient for the correction of the evils incident to wars of rates, and federation stands therefore at the present day as the only apparent substitute for the operation of the regulating influence of the commercial laws of supply and demand and of competition, which laws, as before stated, never have, and in the nature of things never can,

become the determining principle with respect to freight rates on particular railroads.

The degree of favor with which pooling is now and has for the last eight years been regarded in this country arises from the fact that it has been instrumental in correcting the intolerable evils hereinbefore described, while, at the same time, rates have greatly fallen, and the internal commerce of the country has enormously increased.

The railroad managers of the country have not resorted to pooling voluntarily, but reluctantly. From the beginning they appear not to have regarded pools as in themselves conditions of good, but merely as a recourse against evils for the prevention of which pooling seemed to be the only available expedient. The managers of each line would gladly see all of its competitors bound together in a pooling organization and itself exempted from such restraint.

The objections to pooling in the minds of railroad managers appear at first to have arisen not only from an unwillingness to surrender their power over rates and the power of determining the range of their competitive struggles, but also from an apprehension that such combinations would be likely to incur public hostility. This may be illustrated by an incident in the history of pooling.

For two or three years prior to 1874 the four leading trunk lines of the Atlantic seaboard States had been engaged in a war of rates. In August of that year an attempt was made to enter into an agreement commonly known at the time as the "Saratoga compact." This agreement related merely to the maintenance of rates, and did not contemplate pooling. The Baltimore and Ohio Railroad Company, however, refused to enter into the arrangement. At a subsequent meeting (held at Baltimore) of the presidents of the four trunk lines, Mr. Garrett, presi-

dent of the Baltimore and Ohio Railroad, in reply to the arguments addressed to him, said :

If the four great trunk lines should join in such an organization, with the power which they could exercise over connecting lines, it would be regarded by the people as a combination against their interests, and as the result there would be a combination of the people against the rail-ways of the country ; and through the courts, which are the exponents of the conscience and interests of the public, and through the representatives of the people, in legislatures and in Congress, hostile action would be induced, which would more than counterbalance the advantages which would flow from the increased rates which would be commanded through so powerful an organization.

It is reported that Mr. Cornelius Vanderbilt, sr., president of the New York Central and Hudson River Railroad, replied that in his opinion there was much force in this view. At that time pooling existed in this country only in a few cases and under conditions by no means complex. But to-day almost the entire railroad system of the country is embraced in pooling organizations.

The economic view of submission to the rule of a "pool" appears to be simply this : The several contestants become convinced that at rates which can be maintained by pooling, the share of the traffic allotted to each road will yield a larger net revenue than could possibly be realized by each from the share of the traffic which it could possibly secure in an unconstrained contest with his competitors. The rates which can be secured in such a contest are of course much lower than pool rates. The public know to what apparent folly railroad managers resort in lowering both freight and passenger rates during wars of rates. Finally it was realized that even though by the terms of settlement under pooling the share allotted to any particular lines might be considerably less than the share which could be secured in a war of rates, still the higher pool rates would yield better net results.

But the experimental knowledge gained from a war of rates appears generally to be necessary in order to lead railroad managers to the adoption of that expedient. This, however, arises in the very nature of things. Railroad managers are usually men of strong personal will-power, and each appears to assume *a priori* that his line has a higher degree of relative efficiency than any of his rivals are willing to concede.

Like all other bargains and compacts of a commercial nature, pooling arrangements rest upon the basis of enlightened views of self-interest gained from the lessons of experience.

The practical utility of the war of rates with respect to the interests of railroad companies appears to be that it determines the share of the competitive traffic to which each line is entitled, as during such contests rates are usually kept about equal over each one of the rival lines. Latterly in certain instances the more astute and less destructive policy of agreeing to compete for a stated period under equal rates appears to have been adopted for the purpose of ascertaining the relative strength of the several competing lines. A notable example of this has recently been furnished by the several transcontinental competitors for the traffic of California, Oregon, and Washington Territory, the results of their operations under equal rates for one year having been taken as the basis of pooling in the future.

Agreements as to the pooling or division of traffic are, however, but one of the features of pooling organizations or railroad federations, and in practice are found not to constitute their most important feature, touching the commercial interests of the country. Since agreements establish over their constituent members a sort of government having general jurisdiction with respect, first, to the ap-

portionment of traffic ; second, to the establishment of the rates which shall be charged for the carriage of goods of the various classes and the maintenance of such rates ; third, to the rendering of such returns either to each other or to a joint agent, as may be necessary, in order that the managers of each railroad may know what amount of traffic competing railroads are carrying ; fourth, to the determination of the route which traffic shall take from the point of shipment to the point of destination ; fifth, to the division or pro-rating of rates over the several roads on which freight is carried, in each case of joint service ; and sixth, to the establishment and maintenance of a uniform classification of rates. The conduct of railroad confederations also embraces many other matters arising in the detail of railroad management, and, in a word, it is intended that they shall secure the orderly conduct of the great commercial movements of the country.

Notwithstanding the protection against the evils of wars of rates which pooling provides, there is probably not a single pooling organization in this country which has not been subject to severe and long-continued revolts. The great East and West Trunk Line Association, embracing almost all the main lines between the Atlantic seaboard north of the Potomac and Ohio rivers and east of the Mississippi river, has been time and again disturbed by long-continued wars of rates among its members. That association is presided over by Mr. Albert Fink, a gentleman of large practical knowledge of railroad affairs, and distinguished for his high administrative ability. But Mr. Fink has not been able perfectly to compass all the centrifugal tendencies of the great organization which he was mainly instrumental in organizing, and which from the first he has administered.

The instability of pooling agreements was described in

the report of this office on internal commerce for 1879, as follows :

Agreements as to the pooling or apportionment of traffic are based upon the relative amount of traffic which each company may have been able to secure during a period of warfare, and upon a careful estimate of the present ability of the several companies to secure traffic.

Apportionment schemes are therefore liable to disruption as the result of changes materially affecting the relation of the several constituent lines to each other. But such changes are constantly taking place as the result of the development of local or through traffic, the construction of new roads, the formation of new combinations and agreements, and many other circumstances affecting their internal conditions and external relations.

In conclusion, the following general observations may be made in regard to railroad federations or pooling organizations :

First. They have been instrumental in preventing unjust discriminations through special secret rates to favored shippers, and the consequent demoralization of trade.

Second. They have prevented many unjust and ruinous discriminations against towns and cities, and against particular States or sections of the country.

Third. They have put a stop to violently fluctuating rates.

Fourth. They have had the effect of protecting the weaker lines and of preventing their absorption by the stronger lines, and thus of conserving elements of competition in transportation.

Fifth. By preventing the absorption of the weaker by the stronger lines, they have prevented the threatened danger to the country of its being districted among a few great corporations, by which means the regulating influence of the competition of trade forces would have been eliminated, and transportation would have gotten the mastery of trade.

Sixth. They have tended to prevent those shocks to the financial interests of the country which generally accompany the bankruptcy of great railroad corporations.

Seventh. Since they have been adopted the railroad transportation facilities of the country have been greatly extended. The volume of traffic has also enormously increased, and rates have constantly fallen. These facts seem to prove that railroad federation has not had the effect of obstructing the beneficial operation of the overruling competition of trade forces and of the direct competition between transportation lines. Statistics hereinbefore presented clearly indicate this fact.

Eighth. The most hopeful aspect of federations for the division or pooling of traffic is that thereby the railroads have been brought to a condition in which their accountability to the public interests may be more clearly defined, and in which any departure from undoubted principles of right can be observed and the responsibility therefor located. It is believed to be much easier to regulate great federations of railroads with respect to matters relating to commerce among the States than to regulate a great number of railroads acting independently, for the reason that these federations constitute concrete expressions of relationships and antagonisms both among railroads and among trade centres, and tend to illustrate the relative force of the same.

Ninth. Railroad pools have not proved to be rigid compacts, but they have been constantly subject to change. Occasional and even protracted wars of rates render their requirements at times almost entirely inoperative. This must, in the light of public interests, be regarded as a favorable symptom of their practical workings. The conditions surrounding and governing the commercial and transportation interests of the country are constantly sub-

ject to change, and it is impracticable that any fixed rules or set of rules should be formulated which in practice would tend to prevent such changes.

It has been suggested that the National Government ought to recognize pools and to enforce the observance of their agreements. But their present unfixedness, and the many failures fully to accomplish the results at which they have aimed, seem to render such a step, at this time, premature.

Pooling organizations appear always to occupy a position of unstable equilibrium. They have the support of a sense of self-interest, and faith in an administrative head, but they lack the third essential element of support, viz., legal recognition. Their instability tends, however, to disarm the suspicion in the public mind that they are essentially combinations inimical to the public interests.

It would be unwise at the present time to assume that no better expedient than pooling can be adopted for the protection of the commercial, industrial, and transportation interests of the country against the destructive and demoralizing results of wars of rates, or to assume that railroad pools as they exist to-day are not susceptible of such improvements as would greatly advance their usefulness.

It has been the object of this brief dissertation upon railroad pooling organizations to describe them historically and in their practical workings rather than to pass judgment upon them. Their relations to the transportation and commercial interests of the country constitute a large and exceedingly important question, and one which might well engage the earnest and careful attention of a national railroad commission.





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